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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

OAKLANDISH, LLC,

Plaintiff,

v.

SENTINEL INSURANCE COMPANY
LTD.,

Defendant.

Case No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Oaklandish, LLC, individually and on behalf of all others similarly
2 situated, files suit against Defendant Sentinel Insurance Company Ltd. and alleges as
3 follows:

4 INTRODUCTION

5 1. Since March 19, 2020, California's "Stay at Home" order has instructed
6 all 40 million California residents to remain at home, with certain exceptions. Though
7 lifesaving, this mandate, which remains in place, ends in-person shopping at
8 California retailers and remains in place to this day, though localities are permitted to
9 reopen if they meet certain conditions for a variance from the statewide order. This is
10 not merely causing severe financial distress for retailers and their employees; such
11 closures threaten the viability of California's retail industry.

12 2. Plaintiff's stores in Oakland, California are among the thousands that
13 were forced to cease in-person shopping as part of the Stay at Home order.
14 Oaklandish and many California retailers – none of whom bear fault for statewide
15 closures – were responsible business stewards, thus paying for business interruption
16 insurance to protect against a situation like this.

17 3. But insurance companies operating in California are categorically
18 denying claims from retailers arising from California's mandated interruption of
19 business services. Those denials are often made with little or no investigation and
20 without due regard for the interests of insureds.

21 4. Indeed, form letters denying coverage for such losses appear to rest on
22 crabbed readings of coverage language and overbroad readings of exclusions. That
23 gets insurance law exactly backwards – and raises the specter of bad-faith denials.

24 5. Oaklandish's experience is no different. It has dutifully followed
25 California's mandates. Facing serious financial harm, it has filed a claim with Sentinel
26 for business interruption coverage.

27 6. Defendant swiftly denied the claim. Though its reasons are cursory, the
28 denial appears to be based on an unreasonable reading of its policy, which tracks

1 form policies issued throughout California on a take-it-or-leave-it basis.

2 7. That leaves Oaklandish in financial straits – precisely the situation it
3 sought to avoid when it obtained coverage for business interruptions.

4 8. Oaklandish and other retailers bought full-spectrum, comprehensive
5 insurance for their *businesses* – not just for tangible damage to their premises and
6 equipment. And for good reason. Insurance coverage is important, if not vital,
7 particularly for small businesses.

8 9. Oaklandish and other California retailers reasonably believed they had
9 comprehensive coverage that would apply to business interruptions under
10 circumstances like these, where they have done everything right to protect their
11 businesses and the public. But insurance companies like Sentinel are cutting those
12 lifelines – despite having pocketed significant premiums for Plaintiff’s policy.

13 10. Plaintiff thus brings this action, on behalf of itself and other California
14 retailers, seeking declaratory relief, insurance coverage owed under Sentinel’s policy,
15 and damages.

16 **PARTIES**

17 11. Plaintiff Oaklandish, LLC is a limited liability company formed under
18 the laws of California. Its principal place of business is in Oakland, California.

19 12. Defendant Sentinel Insurance Company Ltd. is a company organized
20 under the laws of Connecticut with its principal place of business in Hartford,
21 Connecticut. At all relevant times, Sentinel operated in California. Sentinel is an
22 affiliate of insurer The Hartford.

23 **JURISDICTION AND VENUE**

24 13. This Court has subject matter jurisdiction over this action under 28
25 U.S.C. § 1332(d)(2) because this is a class action wherein the amount in controversy
26 exceeds the sum or value of \$5,000,000, exclusive of interest and costs, there are more
27 than 100 members in the proposed class, and at least one member of the class is a
28 citizen of a state different from Defendant.

1 14. This Court has personal jurisdiction over Defendant, because Defendant
2 conducts business in Oakland, California.

3 15. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b) as a
4 substantial part of the events or omissions giving rise to the instant action occurred in
5 Oakland, California.

6 **INTRADISTRICT ASSIGNMENT**

7 16. Assignment to the Oakland or San Francisco Division would be proper
8 because Defendant has conducted business there and a substantial part of the events
9 or omissions which give rise to the claims alleged herein occurred in Alameda
10 County.

11 **FACTUAL BACKGROUND**

12 17. In January 2020 early media reports documented an outbreak of a novel
13 strain of coronavirus – COVID-19 – in Wuhan, China. By late January, it was
14 generally understood in the scientific and public health communities that COVID-19
15 was spreading through human-to-human transmission and could be transmitted by
16 asymptomatic carriers.

17 18. On January 30, 2020, reports of the spread of COVID-19 outside China
18 prompted the World Health Organization to declare the COVID-19 outbreak a
19 “Public Health Emergency of International Concern.”

20 19. On March 11, the World Health Organization declared COVID-19 a
21 global health pandemic based on existing and projected infection and death rates and
22 concerns about the speed of transmission and ultimate reach of this virus.

23 20. Public health officials have recognized for decades that non-
24 pharmaceutical interventions (NPIs) can slow and stop the transmission of certain
25 diseases. Among these are screening and testing of potentially infected persons;
26 contact tracing and quarantining infected persons; personal protection and
27 prevention; and social distancing. Social distancing is the maintenance of physical
28 space between people. Social distancing can be limited – *e.g.*, reducing certain types

1 of conduct or activities like hand-shaking – or large-scale – *e.g.*, restricting the
2 movements of the total population.

3 21. A lack of central planning, shortages of key medical supplies and
4 equipment, and the unfortunate spread of misinformation and disinformation about
5 the risks of COVID-19 has led to widespread confusion, unrest, and uncertainty
6 regarding the likely trajectory of this pandemic and the appropriate counter-measures
7 necessary to mitigate the damage it could potentially cause.

8 22. Beginning in late February, public health officials began advising
9 various governments around the world that one of the most disruptive NPIs –
10 population-wide social distancing – was needed to stop the transmission of COVID-
11 19. Suddenly schools, offices, public transit, restaurants, bars, music venues, and
12 shops -- densely occupied spaces, heavily traveled spaces, and frequently visited
13 spaces – were likely to become hot-spots for local transmission of COVID-19.

14 23. By mid-March, that advice was being implemented by state and local
15 governments across the United States. In many respects, California led the way,
16 becoming one of the first states to order widespread closures.

17 24. California’s Governor Gavin Newsom, on March 12, 2020, issued a
18 statewide directive known as the Safer at Home order: “All residents are to heed any
19 orders and guidance of state and local public health officials, including but not
20 limited to the imposition of social distancing measures, to control the spread of
21 COVID-19.”

22 25. Following closely on the heels of local closure orders, including in
23 Alameda County, on March 19, 2020, the Governor issued another series of mandates
24 (the Stay at Home Order) – which remain in effect to date, subject to approved county
25 variances – requiring retailers to cease in-person services, though curbside sales or by
26 delivery are now permitted.

27 **PLAINTIFF’S EXPERIENCE**

28 26. Plaintiff operates a fashion line called Oaklandish with several retail

1 stores located in Oakland, California. Oaklandish sells clothing and accessories
2 showcasing symbols of Oakland.

3 27. Oaklandish has complied with all applicable orders of California state
4 and local authorities. Compliance with those orders has caused direct physical loss of
5 Oaklandish's insured property in that its business locations and its equipment,
6 furnishings and other business personal property, have been made unavailable,
7 inoperable, useless and/or uninhabitable; and its functionality has been severely
8 reduced if not completely or nearly eliminated.

9 28. The impact of these orders is felt not simply in their direct application to
10 Oaklandish's operations, but also in the damage caused to neighboring businesses
11 and properties.

12 29. Even when California relaxes or revokes its mandates, Oaklandish will
13 encounter continued loss of business income due to those orders because, in issuing
14 those orders, government officials have stated that densely occupied public spaces are
15 dangerously unsafe, and continuing to operate the shop in the same manner as before
16 could expose Oaklandish to the risk of contaminated premises as well as exposing
17 customers and workers to transmission and infection risks.

18 30. Plaintiff purchased comprehensive commercial liability and property
19 insurance from Defendant to insure against risks the business might face. Such
20 coverage includes business income coverage for the loss, as well as additional "civil
21 authority" coverage. Once triggered, the policy pays actual losses sustained for the
22 business income and extra expense coverage.

23 31. To date, Plaintiff has paid all of the premiums required by Defendant to
24 keep its policy in full force. These premiums have totaled many thousands to date.

25 32. On or about April 2020, Plaintiff reported a loss of business income as of
26 March 2020, under Policy 57 SBA BI1262 SC.

27 33. On or about April 20, 2020, Defendant denied Plaintiff's claim for
28 coverage. In a cursory denial letter, Defendant took the position that "since COVID-19

1 did not cause property damage at your place of business or in the immediate area,
2 this business income loss is not covered.” Sentinel further stated that “[e]ven if
3 COVID-19 did cause damage, it is excluded from the policy.”

4 34. Defendant’s denial letter, on information and belief, appears to be a
5 form letter sent in response to business interruption claims arising from California’s
6 Stay at Home orders.

7 35. Defendant’s denial is contrary to the terms and conditions of the policy
8 and applicable law, which gives effect to plain language, construes coverage
9 agreements broadly, narrowly construes exclusions and construes ambiguity in favor
10 of coverage. Insurers have the burden of proving the applicability of exclusions.

11 36. Defendant’s denial of coverage breached its obligation and
12 responsibility to provide coverage available through the policy to Plaintiff due to its
13 covered loss of business income.

14 37. As a result, Defendant’s denial of coverage and breach of the insurance
15 policy it issued, Plaintiff has suffered and will continue to suffer damages.

16 38. A declaratory judgment determining that the coverage provided under
17 the policy and an order that such coverage is owed will prevent Plaintiff and Class
18 members from being wrongfully left without vital coverage acquired to ensure the
19 survival of its businesses in these circumstances. As a result of the Stay at Home
20 orders, Plaintiff has incurred and continues to incur a substantial loss of business
21 income and additional expenses covered under the policy.

22 **CLASS ALLEGATIONS**

23 39. Plaintiff re-alleges and incorporates by reference herein all of the
24 allegations contained above.

25 40. Business insurance policies purchased by small businesses like Plaintiff
26 are not individually negotiated. At most, the prospective policyholder may elect to
27 add specialized coverage options to a basic business insurance policy. But the
28 substantive terms are set unilaterally by the insurer.

1 41. Plaintiff's policy includes common terms and phrases widely used by
2 the insurance industry. The insurance industry typically hews closely to
3 standardized insurance policy forms in addressing property and liability risks, and
4 Defendant did so here.

5 42. As the impact of the COVID-19 pandemic is emerging, leading
6 insurance industry associations have publicly stated that such standard business
7 insurance policies do not provide any coverage for the business losses related to
8 public health orders like the Stay at Home orders imposed by California. The denial
9 letter received by Plaintiff – issued without any investigation at Plaintiff's premises
10 and shortly after a claim was filed – appears to be a form letter that, on information
11 and belief, is sent automatically to any such business with comprehensive business
12 insurance that files a claim at this time.

13 43. Pursuant to Fed. R. Civ. P. 23(b)(2), 23(b)(3), and 23(c)(4), Plaintiff brings
14 this action on behalf of itself and the following Class (the "Class"): All retailers in
15 California that purchased comprehensive business insurance coverage from
16 Defendant which includes coverage for business interruption, filed a claim for lost
17 business income following California's Stay at Home order, and were denied
18 coverage by Defendant.

19 44. Excluded from the Class are Defendant, any entity in which Defendant
20 has a controlling interest, and Defendant's officers, directors, legal representatives,
21 successors, subsidiaries, and assigns. Also excluded from the Class are any judge,
22 justice, or judicial officer presiding over this matter and the members of their
23 immediate families and judicial staff.

24 45. This action has been brought and may properly be maintained as a class
25 action as it satisfies the numerosity, commonality, typicality, adequacy,
26 predominance, and superiority requirements.

27 46. Plaintiff reserves the right to amend the Class definition if discovery and
28 further investigation reveal that the Class should be expanded, divided into

1 subclasses, or modified in any other way.

2 47. Although the precise number of members of the Class is unknown and
3 can only be determined through appropriate discovery, Plaintiff believes, and on that
4 basis alleges, that the members of the proposed Class are so numerous that joinder of
5 all members would be impracticable. There are tens of thousands of retailers in
6 California which are governed by the Stay at Home order and attendant statewide
7 restrictions, and public reporting reveals that many have filed for coverage but have
8 been denied.

9 48. Questions of law and fact common to the Class exist that predominate
10 over questions affecting only individual members, including *inter alia*:

- 11 a. Whether Defendant's comprehensive business insurance policies
12 cover claims for lost business income under the circumstances
13 present here;
- 14 b. Whether the terms, definitions, and exclusions that Defendant
15 has relied on to deny coverage reasonably can be construed in the
16 manner that Defendant claims, or are otherwise unenforceable as
17 a basis for Defendant's denials or, instead, must be construed to
18 provide coverage under California law;
- 19 c. Whether the virus exclusion endorsement excludes coverage for
20 the Stay at Home order;
- 21 d. Whether Defendant breached the implied covenant of good faith
22 and fair dealing in its handling of the claim;
- 23 e. Whether Defendant acted in bad faith in denying claims for lost
24 business income without investigation or due consideration of
25 those claims; and
- 26 f. Whether the declaratory judgment sought is appropriate.

27 49. Plaintiff is a member of the putative Class. The claims asserted by the
28 Plaintiff in this action are typical of the claims of the members of the putative Class as

1 the claims arise from the same course of conduct by Defendant and the relief sought is
2 common.

3 50. Plaintiff will fairly and adequately represent and protect the interests of
4 the members of the putative Class, as its interests coincide with, and are not
5 antagonistic to, the other members of the Class. Plaintiff has retained counsel
6 competent and experienced in both consumer protection, insurance coverage, and
7 class-action litigation.

8 51. Certification of the Class is appropriate pursuant to Fed. R. Civ. P. 23
9 (b)(3) because:

- 10 a. Questions of law or fact common to the respective members of
11 the Class predominate over questions of law or fact affecting only
12 individual members. This predominance makes class litigation
13 superior to any other method available for the fair and efficient
14 adjudication of these claims including consistency of
15 adjudications. Absent a class action it would be highly unlikely
16 that the members of the Class would be able to protect their own
17 interests because the cost of litigation through individual
18 lawsuits might exceed the expected recovery.
- 19 b. A class action is a superior method for the adjudication of the
20 controversy in that it will permit a large number of claims to be
21 resolved in a single forum simultaneously, efficiently, and
22 without the unnecessary hardship that would result from the
23 prosecution of numerous individual actions and the duplication
24 of discovery, effort, expense, and the burden of the courts that
25 individual actions would create.
- 26 c. The benefits of proceeding as a class action, including providing
27 a method for obtaining redress for claims that would not be
28 practical to pursue individually, outweigh any difficulties that

might be argued with regard to the management of the class action.

52. The Class should also be certified pursuant to Fed. R. Civ. P. 23(b)(2) because:

- a. The prosecution of separate actions by the individual members of the proposed class would create a risk of inconsistent adjudications, which could establish incompatible standards of conduct for Defendant.
- b. The prosecution of individual actions could result in adjudications, which as a practical matter, would be dispositive of the interests of non-party class members or which would substantially impair their ability to protect their interests.
- c. Defendant has acted or refused to act on grounds generally applicable to the proposed Class, thereby making appropriate final and injunctive relief with respect to the members of the proposed Class as a whole.

53. Likewise, particular issues are appropriate for certification under Fed. R. Civ. P. 23(c)(4) because such claims present only particular, common issues, the resolution of which would advance the disposition of this matter and the parties' interests therein. Such particular issues include, but are not limited to:

- a. Whether the comprehensive business insurance policies issued by Defendant covers class members' direct physical loss of property and lost business income following California's Stay at Home order;
- b. Whether the coverages for direct physical loss of property and lost business income provided by the comprehensive business insurance policies are precluded by exclusions or other limitations in those policies;

- 1 c. Whether Defendant breached contracts by denying
2 comprehensive business insurance coverage to Plaintiff and Class
3 members;
- 4 d. Whether summary denial of claims for direct physical loss of
5 property and lost business income, including by invoking an
6 exclusion for viruses, without any investigation or inquiry
7 constitutes bad faith and therefore a breach of the implied
8 covenant of good faith and fair dealing to act in good faith and
9 with reasonable efforts to perform their contractual duties and
10 not to impair the rights of other parties to receive the rights,
11 benefits, and reasonable expectations under the contracts;
- 12 e. Whether the handling of the claim with the knowledge that
13 Defendant would not provide coverage for business interruptions
14 associated with public health measures such as California's Stay
15 at Home order constitutes a breach of the implied covenant of
16 good faith and fair dealing.
- 17 f. Whether Plaintiff and Class members are entitled to actual
18 damages and/or injunctive relief as a result of Defendant's
19 wrongful conduct.

20 **FIRST CAUSE OF ACTION**

21 **Declaratory Judgment**

22 54. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

23 55. Plaintiff purchased a comprehensive business insurance policy from
24 Defendant.

25 56. Plaintiff paid all premiums required to maintain its comprehensive
26 business insurance policy in full force.

27 57. The comprehensive business insurance policy includes provisions that
28 provide coverage for the direct physical loss of or damage to the premises as well as

1 actual loss of business income and extra expenses sustained during the suspension of
2 operations as a result of such loss or damage.

3 58. On or about March 19, California issued the Stay at Home order,
4 mandating that all Californians remain at home, with certain exceptions. This
5 mandate required retailers to cease all non-essential services. This mandate also
6 applied to neighboring businesses, thus causing widespread closures surrounding
7 Plaintiff's business premises.

8 59. As a direct result of this mandate, Plaintiff has suffered direct physical
9 loss of its covered property because it lost some or all of its functionality and/or
10 became inaccessible, inoperable, useless and/or uninhabitable, resulting in
11 substantial loss of business income.

12 60. These losses are insured losses under Plaintiff's comprehensive business
13 insurance policy including business income and extra expense coverage.

14 61. Defendant cannot meet its burden of proving that there are applicable,
15 enforceable exclusions or limitations of coverage in the insurance policies that
16 preclude coverage for these losses.

17 62. WHEREFORE, Plaintiff seeks a declaration for itself and similarly
18 situated retailers that its business income losses are covered and not precluded by
19 exclusions or other limitations in its comprehensive business insurance policy.

20 **SECOND CAUSE OF ACTION**

21 **Breach of Contract**

22 63. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

23 64. Plaintiff purchased a comprehensive business insurance policy from
24 Defendant to insure against all risks (unless specifically excluded) a business might
25 face. This policy was a binding contract that afforded Plaintiff comprehensive
26 business insurance under the terms and conditions of the policy.

27 65. Plaintiff met all or substantially all of its contractual obligations,
28 including paying all the premiums required by Defendant.

66. On or about March 19, California issued the Stay at Home order, mandating that all Californians remain at home, with certain exceptions. This mandate required retailers, including that owned by Plaintiff, to cease all in-person services. This mandate also applied to neighboring businesses, thus causing widespread closures surrounding Plaintiff's business premises.

67. Beginning on March 16, 2020, and continuing through the date of the filing of this Complaint, Plaintiff suffered the direct physical loss of property and lost business income alleged above—losses which were covered under the comprehensive business insurance policy purchased from Defendant.

68. Defendant cannot meet its burden of proving that there are applicable, enforceable exclusions or limitations of coverage in Plaintiff's comprehensive business insurance policy that precludes coverage.

69. Defendant breached its contracts by denying comprehensive business insurance coverage to Plaintiff and Class members.

70. As a direct and proximate result of Defendant's denial of comprehensive business insurance coverage to Plaintiff and Class members, Plaintiff and members of the Class have suffered damages.

71. WHEREFORE, Plaintiff seeks: (a) a judgment for itself and similarly situated retailers that Defendant breached its contracts with Plaintiff and Class members; and (b) corresponding damages for that breach.

THIRD CAUSE OF ACTION

Breach of Implied Covenant of Good Faith and Fair Dealing

72. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

73. Plaintiff and Class members contracted with Defendant to provide it with comprehensive business insurance to insure against all risks (unless specifically excluded) a business might face.

74. This contract was subject to an implied covenant of good faith and fair dealing that all parties would act in good faith and with reasonable efforts to perform

1 their contractual duties – both explicit and fairly implied – and not to impair the
 2 rights of other parties to receive the rights, benefits, and reasonable expectations
 3 under the contracts. These included the covenant that Defendant would act fairly and
 4 in good faith in carrying out its contractual obligations to provide Plaintiff and Class
 5 members with comprehensive business insurance.

6 75. Defendant breached the implied covenant of good faith and fair dealing
 7 by:

- 8 a. Selling policies that appear to provide liberal coverage for loss of
 9 property and lost business income with the intent of interpreting
 10 undefined or poorly defined terms, undefined terms, and
 11 ambiguously written exclusions to deny coverage under
 12 circumstances foreseen by Defendant;
- 13 b. Denying coverage for loss of property and lost business income
 14 unreasonably, and without proper cause, by applying undefined,
 15 ambiguous, and contradictory terms contrary to applicable rules
 16 of policy construction and the plain terms and purpose of the
 17 policy;
- 18 c. Denying Plaintiff's claim for loss of property and loss of business
 19 income without conducting a fair, unbiased and thorough
 20 investigation or inquiry;
- 21 d. Failing to provide a written explanation of the legal and factual
 22 basis for its denials; and
- 23 e. Compelling policyholders, including Plaintiff, to initiate litigation
 24 to recover policy benefits to which they are entitled.

25 76. Plaintiff met all or substantially all of its contractual obligations,
 26 including by paying all the premiums required by Defendant.

27 77. Defendant's failure to act in good faith in providing comprehensive
 28 business insurance coverage to Plaintiff denied Plaintiff the full benefit of its bargain.

1 Dated: July 20, 2020

Respectfully submitted,

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3
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